

Commission on Victims in the Courts

Friday, February 21, 2014

10:00 a.m. to 12:00 p.m.

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 119 A/B

APPROVED 6/20/2014

Present: Judge Ronald Reinstein, Chair, Michael Breeze, Judge Peter Cahill, Sydney Davis, Karen Duffy-*telephonically*, Captain Larry Farnsworth-*telephonically*, Kirstin Flores, Leslie James, Michael Lessler, Judge Evelyn Marez, Jim Markey, Pam Moreton-*telephonically*, Elizabeth Ortiz-*by proxy Barbara Marshall*, Doug Pilcher, Karyn Rasile, Judge Sally Simmons-*telephonically*, Dimple Smith-*telephonically*, Judge Richard Weiss-*telephonically*, Judge Joseph Welty-*telephonically*, Chief Cindy Winn

Absent/Excused: James Belanger, Judge Timothy Dickerson, Judge Elizabeth Finn, Dan Levey, Shelly Corzo-Shaffer, Keli Luther

Presenters/Guests: Amy Love, Legislative Liaison/AOC, Colleen Clase, Arizona Voice for Crime Victims

Staff: Carol Mitchell, AOC; Kelly Gray, AOC

I. Regular Business

A. Welcome and Opening Remarks

The February 21, 2014 meeting of the Commission on Victims in the Courts was called to order by the Chair, Honorable Ronald Reinstein, at 10:04 a.m.

The Chair asked for a Commission member roll call and introductions of staff and guests. The Chair presented, and asked the group, for upcoming events and announcements.

National Crime Victim's Rights Week begins on Sunday, April 6, 2014 through Saturday, April 12, 2014. Ms. Flores indicated that there will be a lunch event on Wednesday, April 9, 2014 that will likely be held at the Kroc Corps Community Center, near Phoenix South Mountain, in Maricopa County.

Judge Marez, mentioned that Navajo County is having their 5th Annual Victims' Rights Symposium in Snowflake, Arizona on Friday, April 11, 2014.

The Chair indicated that the Office for Victims of Crime (OVC) provided materials that are designed to help communities and victim assistance providers promote awareness of crime victim issues. The guide provided includes educational content, campaign materials, artwork, and a theme video for National Crime Victim's Rights Week. Individuals and/or agencies can view the guide online or download all materials for use offline at <http://ovc.ncjrs.gov/ncvrw2013/index.html>.

The Chair discussed that the Office for Victims of Crime annually recognizes individuals and organizations that demonstrate outstanding service in supporting victims and victim services. Each year there is an awards ceremony held in Washington, DC to honor individuals, organizations, and programs for their outstanding efforts on behalf of crime victims. The Chair nominated COVIC for a public policy award through the Arizona Attorney General's Office annual victim rights recognition luncheon and awards ceremony.

The Chair mentioned that he and Jim Markey are attending a working group in Washington D.C. sponsored by the National Institute of Justice. The group will discuss the Sexual Assault Forensic Evidence Reporting Act (SAFER), a section of the Violence Against Women Act (VAWA). SAFER was a non-funded directive that instructs agencies to test the Sexual Assault Test Kits in evidence. The upcoming roundtable will afford participants an opportunity to discuss funding of the research needed to identify the kits that need to be processed and rollout of the program for agencies across the country.

B. Approval of October 18, 2013 Minutes

The draft minutes from the October 18, 2013, meeting of the Commission on Victims in the Courts were presented for approval. The chair called for any omissions or corrections to the minutes from October 18, 2013 meeting.

- Motion was called by Judge Peter Cahill for the approval of minutes; Ms. Sydney Davis seconded; motion passed unanimously.

II. New Business

A. Legislative Update

Ms. Amy Love, Legislative Liaison for the AOC, presented information on legislation related to victims. Ms. Love reviewed the following legislative bills:

H2057: Setting Aside Conviction; Public Records

On request and showing of good cause, a judge, justice of the peace or magistrate is authorized to seal the record of a person whose judgment of guilt is set aside. Public agencies are prohibited from knowingly displaying or disclosing any information in a sealed record. First sponsor: Rep. Kavanagh.

Commentary: This bill never went to hearing.

H2307: Sentencing; Probation

For the purpose of sentencing repetitive felony offenders and dangerous felony offenders, if the presentence report includes a clear and compelling recommendation that the person is seriously mentally ill or has a history of mental illness and would benefit from supervised probation, the court is authorized to suspend the imposition or execution of sentence and place the person on supervised probation. First sponsor: Rep. J. Pierce.

Commentary: The strike-everything amendment to HB2307 allows each county to establish a County Attorney Deferred Prosecution Fund. It requires the court to hold regular review hearings on the progress of persons in deferred prosecution programs. It requires an annual report be prepared by the county attorney and the chief probation officer that includes, the number of persons diverted through diversion programs established pursuant to section 11-361 in each county in the previous fiscal year, the number of persons charged by the county attorney with a criminal offense in the previous fiscal year, the average length of time on probation for a person who is sentenced to a term of probation in the county and the probation department's most recent cost per person for supervised probation. The AOC is concerned about the wording of this piece of legislation and will be working on recommendations for changes.

There were concerns raised about funding of this legislation. It was discussed that the resources needed to monitor deferred defendants as required in the reporting requirements is not supported financially. In response, it was pointed out that the way this proposed legislation is written, it allows for funding through general fund appropriation, federal monies appropriated through for prosecution programs, grants, gifts, donations, and legislative appropriations, and that this legislation is permissive, not mandatory.

Further it was pointed out that many courts already have a deferred sentencing program. What does this legislation do? In response, it was discussed that the legislation creates a reporting requirement not otherwise utilized.

Also, there was discussion about how this legislation may affect the court's and county attorney's ability to sentence. A question was raised that if the court/county attorney did not want court monitoring as allowed by other statutes, how would this affect their sole authority on diversion programs?

H2314: Prosecutor Presence; Interview of Minor

The defendant, defendant's attorney or an agent of the defendant is prohibited from interviewing a minor child who is a victim and who has agreed to an interview unless the prosecutor is present, even if the minor child's parent initiates contact with the defendant, defendant's attorney or agent of the defendant. First sponsor: Rep. J. Pierce

Commentary: This was included as an FYI for this group.

H2454: Human Trafficking; Prostitution

Various changes relating to human trafficking. For cases where the minor is 15, 16 or 17 years of age, the minimum, presumptive and maximum sentences are increased for a person who commits child prostitution by causing a minor to engage in prostitution or financing, controlling or owning prostitution activity involving a minor. It is child prostitution to engage in prostitution with a minor who the person should have known, instead of only who the person knows, is 15, 16 or 17 years of age. The list of acts constituting aggravating circumstances for sentencing felony sex trafficking is expanded to include that the defendant recruited, enticed or obtained the victim from a shelter designed to serve victims of human trafficking, domestic violence or sexual assault, or runaways, foster children or the homeless. Child prostitution, sex trafficking, and trafficking of persons for forced labor or services are added to the list of acts that constitute "racketeering." If a person committed acts of prostitution as a direct result of being a victim of sex trafficking, it is an affirmative defense to prosecution for prostitution. First sponsor: Rep. E. Farnsworth.

Commentary: The amendment to H2454 requires escort agencies to include their license number when advertising their services and to keep on file for at least one year proof of the age of any escort used in advertising. Establishes civil penalties for violations of these laws. Requires that the civil penalties collected from these violations be deposited in the Human Trafficking Victim Assistance Fund. Establishes the following affirmative defenses: If the escort whose services were offered in an advertisement for escort services was eighteen years of age or older at the time the advertisement was published; The escort or escort agency possessed a valid license at the time the advertisement was published. Expands the criminal offense, "Commercial sexual exploitation of a minor".

H2563: Juvenile Crime Victims' Rights

Various changes to victims' rights for juvenile offenses, including that a vulnerable adult is added to certain protections granted to a minor. Adds various requirements that victims be given notice of specified rights. A victim's contact and identifying information obtained or reported by a law enforcement agency must be redacted in publicly accessible records pertaining to the criminal case involving the victim, with some exceptions. Statute governing the effect of failure to comply is repealed and replaced. A victim of a delinquent act has the right to receive one copy of the police report from the investigating law enforcement agency at no charge. A juvenile who is adjudicated in a delinquency proceeding is precluded from subsequently denying the essential allegations of the delinquent act in any civil proceeding brought by the victim or the state, including adjudications resulting from no contest pleas. First sponsor: Rep. J. Pierce.

Commentary: The perceived goal of this bill is to have juvenile and adult crime victims' rights to match in both A.R.S. § 8 and A.R.S. § 13 language. This bill made it out of committee this week.

H2593: Death; Post conviction; Appellate Proceedings; Dismissal

On a convicted defendant's death, the court is required to dismiss any pending appeal or post conviction proceeding. The death does not abate the defendant's criminal conviction or sentence or any restitution, fine or assessment imposed by the sentencing court. First sponsor: Rep. Allen.

Commentary: It was discussed that that current law suggests that conviction abatement of a defendant occurs at death on appeal. Recently the Arizona Supreme Court held that for cases pending Rule 32 post-conviction proceedings, upon death of a defendant, conviction and restitution does not abate, but did not go as far as when a case is under appeal.

H2625: Penalty Assessment; Victims' Rights Enforcement

Increases the penalty assessment levied on every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses and any civil penalties imposed for traffic violations or a violation of game and fish statutes to \$15, from \$13. Increases the amount from each penalty assessment that the city or county treasurer is required to remit to the State Treasurer to \$10, from \$8, and requires \$2 of the assessment to be deposited in the newly established Victim's Rights Enforcement Fund, to be administered by the Department of Public Safety. The Dept is required to distribute monies from the Fund to nonprofit organizations and entities that provide specified services to crime victims and meet other specified requirements. First sponsor: Rep. Tobin

Commentary: The House judiciary committee amendment clarifies that the non-profit organizations and entities applying for funds shall not be

limited with respect to the type of crimes committed against the victim population they serve.

H2632: Prohibited Possessor; Order of Protection

For the purpose of regulations on weapons, the definition of "prohibited possessor" is expanded to include a person who is subject to an order of protection that prohibits the person from possessing a firearm and that was issued after a hearing that the person had an opportunity to participate in. First sponsor: Rep. Campbell

Commentary: This bill never went to hearing.

S1371: Prostitution; Children

Various changes relating to child prostitution. For cases where the minor is 15, 16 or 17 years of age, the minimum, presumptive and maximum sentences are increased for a person who commits child prostitution by causing a minor to engage in prostitution or financing, controlling or owning prostitution activity involving a minor. It is a class 1 (highest) misdemeanor to knowingly enter a house of prostitution or engage a prostitution enterprise for the purpose of paying money or other valuable consideration for sexual conduct. A child may be taken into temporary custody by a peace officer or a Child Protective Services worker if probable cause exists to believe that the child is a victim or will imminently become a victim of child prostitution or sex trafficking. A minor who is a victim of child prostitution cannot be charged with a violation of child prostitution. A person who was previously convicted or adjudicated delinquent for such a violation may apply to the court that pronounced sentence or imposed probation to have the judgment of guilt or adjudication expunged. First sponsor: Sen. Hobbs

Commentary: This bill never went to hearing.

S1411: Order of Protection; Warnings

A petition for an order of protection must contain warnings to the petitioner that making a false accusation of domestic violence is perjury and that a substantiated false accusation of domestic violence may have an adverse effect in any child custody or marital relations proceeding. An order of protection must include a statement that the defendant has the right to object to the order using an attached form. The burden of proof to determine if an order of protection should remain in place is by clear and convincing evidence. First sponsor: Sen. Murphy

Commentary: The bill passed in committee in the Senate on February 20, 2014. During hearing, issues were raised about the proposed warning language on the Order of Protection. The proposed language may violate the Violence Against Women Act., but it is believed that if

the bill proceeds, the problem will be addressed. Additionally this bill increases the burden of proof to determine if an order should remain in place by clear and convincing evidence. It is believed that if this bill moves out of the Senate, it is unlikely that it will receive a hearing in the House.

B. COVIC Reappointment Process

Every March this Commission has members whose appointment term ends. Some members of this group are appointed due to their position in the victim rights community, and others are selected based upon other recommendations. One of the goals in the reappointment process is to increase the diversity of appointees to include candidates from outlying counties and disciplines.

This year the following member terms are expiring: James Belanger, Michael Breeze, Sydney Davis, Karen Duffy, Captain Larry Farnsworth, Doug Pilcher, Judge Evelyn Marez and Judge Joseph Welty terms are expiring. Carol Mitchell and the Chair have already started the reappointment process, but would like this Commission's assistance in recommending additional candidates. The reappointment process calls for providing both the name of the reappointment individual and an alternate for the Chief Justice to choose from. If you, or your colleagues, have a recommendation for an individual to serve on this Commission, please contact Carol Mitchell at (602) 452-3965 or via email at cmitchell@courts.az.gov. Even if an individual is not selected in this reappointment cycle, he/she can be placed on the list for future cycles.

C. SANE Presentation

Ms. Karen Rasile, Forensic Nurse Manager with the Scottsdale Lincoln Health Network (SLHN), presented information on the role of Sexual Assault Nurse Examiners (SANE) and explained the forensic examination process in strangulation cases.

The SLHN Forensic Nurse program has partnered with the Maricopa County Attorneys' Office and law enforcement agencies throughout the valley to provide forensic exams for sexual assault and minor sex trafficking cases. The purpose of the medical-forensic examination is to identify all injuries that may help corroborate a victim's story, identify the assailant through DNA, and other purposes. The Forensic Nurse Examiners can perform exams anywhere in Maricopa County other than a private residence. Typically the exams are performed in one of the five (5) Maricopa County Advocacy Centers located throughout the valley, other health care facilities, and prisons/jails.

Ms. Rasile explained the role of Forensic Nurses in domestic violence strangulation cases. Strangulation is defined as intentionally or knowingly impeding the breathing or circulation of another and is a Class 4 Felony. Strangulation cases were not successfully prosecuted in the past due to lack of evidence and/or victim cooperation. In late 2011, a pilot program was developed in Maricopa County. Piloted in Glendale and Chandler, the program helped increase prosecution rates of strangulation cases by 47.5%. The Forensic Nurses now assist law enforcement agencies in recognizing and properly addressing possible strangulation cases in the field.

Ms. Rasile provided examples and facts regarding strangulation. She explained that only 4.4 pounds of pressure can close the jugular veins, and 11 pounds of pressure can close the carotid arteries. It can be less than 10 seconds to render someone unconscious from strangulation. She presented photographs of victim injuries and explained that 35% of victims have injuries too minor to photograph, as well as provide additional information about injuries.

During the Q&A session after the presentation, many good points and commentary were expressed. The discussion centered around other programs throughout Arizona, the difficulty of reaching the far counties in Arizona, the medical documentation provided by the Forensic Nurses, and the benefits of the integrity of testimony provided by a Forensic Nurse Examiner in court because the nurses serve as a non-biased, third party providing acute medical services.

D. Brainstorm/Discussion about COVIC Priority Areas

COVIC was established with the following focus areas: making recommendations regarding training and education for judges and court personnel on victims' rights and treatment of victims; working to promote the improved collection and disbursement of restitution; serving as liaison with other established victims' advocacy organizations while maintaining neutrality, and making other recommendations that preserve victims' constitutional rights and administration of justice.

In May of 2013, this Commission made recommendations to the AJC regarding Victims' Rights for the 2015 Strategic Agenda. In this meeting, the Chair requested discussion about the focus of the Commission in the coming year based on the recommendations provided to the AJC.

Encourage the coordination of technology solutions to ensure victim safety by making terms and conditions of release readily accessible to law enforcement.

Discussion: The focus of this conversation was an update on the progress of the working group established in the last COVIC meeting to address this issue. When the first meeting of this group is scheduled,

the initial focus is likely to be on limited jurisdiction court notification of the terms and conditions of release, and improved communication between law enforcement and the courts.

Create uniform procedures for processing and collecting on restitution judgments.

Discussion: The primary focus of this conversation centered on issues in the restitution process throughout the country. One of the current topics is what happens when a conviction is reversed on appeal and some restitution has been paid. Is the defendant repaid what he/she has already paid out? If so, who repays the defendant (the State or Plaintiff)? The consensus is that the State repays the defendant, but there have been other cases where the defendant was NOT entitled to repayment. Arizona does not require repayment to the defendant upon reversal.

Additionally, an important issue related to restitution is the collection of restitution judgments. The US Attorney's Office, Civil Division assists victims with the collection of a restitution judgment; however in Arizona and in most states in the country, victims are left on their own to execute/collect on the judgment. In the federal courts, the mandate is written into the prosecuting attorney legislation. In Arizona, some courts have adopted system where nonpayment of restitution is treated similarly to a contempt of court issue. It was suggested that this should be an issue to focus on in the coming year and this Commission can help advance some resolutions to this issue.

Extend language access services to victims and victim families in court proceedings.

Discussion: The focus of this conversation was on the difficulty in finding qualified interpreters for languages beyond Spanish, as well as the difficulty in finding multiple interpreters of the same language for the same hearing (one for the defendant, one for the plaintiff, etc.). The discussion went on to address the efficiency of using the Video Remote Interpreting equipment for remote counties and the cost savings. If there are any questions about language access, Carol Mitchell is available to assist at (602) 452-3965.

Improve intra-court communications between judicial officers on family, juvenile and/or the criminal bench for cases involving child victims to reduce conflicting contact orders and improve communication with other branches of government and justice system partners.

Discussion: The focus of this discussion was on the need for better communication between courts and the informal system currently in use in some courts. In Pima County, there have been efforts over the past

year to formalize communication between courts and other governmental agencies. Though the issue is not as pronounced in the remote/smaller county courts because judges handle multiple case types, there are still issues in some juvenile cases. When the planned formal written protocol from Pima County is complete, the Chair requests that the plan be made available in order to possibly establish a statewide formal communication system.

Evaluate the resource titled, "Multidisciplinary Protocol for the Investigation of Child Abuse" to suggest revisions to court-related victim impacts within the judicial, juvenile court, juvenile and adult probation, mental health and victim services chapters.

Discussion: This conversation centered on the progress already made toward this goal, as some COVIC members provided input for the judicial/court sections. In Maricopa County there is work being done to improve protocol in many different areas including probation, law enforcement, juvenile court, and judicial protocols.

Revise Criminal Benchbook for judicial officers to include information on impact of trauma on children, child accommodations for court proceedings and best practices that help reduce delay in processing violent crimes involving children.

Discussion: The focus of this discussion was the progress made already on this goal and suggestions for the publication. The Chair has been working with the AOC Education Services Division to revise the Criminal Benchbook and include an appendix with Victims' Rights. If any member of this Commission has suggestion about content, please contact Carol Mitchell at (602) 452-3965 or via email at cmitchell@courts.az.gov.

Additional areas of concern to focus on in the coming year suggested by Commission members include:

Electronic notifications (Arizona Board of Executive Clemency): A Committee member was concerned about Arizona Board of Executive Clemency notification to victims by the U.S. Mail. It was suggested that this board start using electronic system, similar to that used by the Arizona Supreme Court to announce decisions and administrative actions..

Electronic notifications (other agency letters to victims): There was a concern raised about the frequency and content of letters provided to victims. Victims receive many notices, including information regarding motions, stays, etc. It was pointed out that this is very cumbersome and confusing to the victim of a crime. This is especially evident in cases where a defendant is sentenced for consecutive terms. For example, a defendant may be eligible for probation on one of the charges in the case, but not in

another, more serious offense. The letter doesn't clarify well which charge(s) are being addressed in the letter.

Public record requests: Concerns were raised about public record requests for victim-related records. Recently there have been requests from media and others for victim-related records including autopsy photos, crime scene photos, and other sensitive documents. It was suggested that this Commission discuss further possible changes to legislation and dissemination of information to the media related to victims.

Media access to the court and records: During discussion, there were concerns voiced about the negative victim impact when there are requests for sensitive documents like crime scene photos, etc. Victims could be traumatized by additional court hearings to stop the release of records and possible media scrutiny. Additional questions were raised about the designation of entities (bloggers, etc.) and what is considered "the media."

III. Call to Public

A. Good of the Order/Call to the Public

Colleen Clase, Arizona Voice for Crime Victims, raised concerns about how the AZTurboCourt e-filing system, handles filings and fees for special actions. Recently her organization was registered as an entity that filing fees were raised, solving the issue for her agency, but there are pro bono victim attorneys that are still experiencing problems.

Ms. Clase identified a few issues that she has seen in courts also. She raised concerns about defendant and law enforcement behavior while in court before a hearing begins. She pointed out that in some court rooms the victim is physically present to see the alleged defendant engaging in inappropriately jovial conversations with law enforcement and other personnel. This can be very disturbing to the victim.

In response, it was pointed out that attorneys sometimes appear to be having good-humored conversation in the courtroom, but in reality they are really working to resolve the case as quickly as possible, a legitimate business purpose. Sometimes this can be misinterpreted by the defendant and others in the court, allowing improper behavior to develop. It was suggested that one of the best ways to quiet the courtroom is to remind everyone that the proceedings are being recorded. Ultimately the judge has control of the courtroom.

Finally, Ms. Clase brought up an issue she had experienced in a restitution hearing with a victim. In this case, the victim and State Prosecutor did not agree on the restitution for a particular charge, but the prosecutor was still allowed to direct the hearing even though she could not make an argument for the victim in

good faith. Ms. Clase was allowed to be heard, and the victim was read her rights, but Ms. Clase felt that it was inappropriate for the prosecutor to represent the victim.

IV. Adjourn

A. Motion

The Chair called for a motion to adjourn at 12:13pm.

- Motion was called by Judge Peter Cahill for adjournment; Mr. Michael Breeze seconded; motion passed unanimously.

B. Next Committee Meeting Date:

Friday, June 20, 2014

10:00 a.m. to 12:00 p.m.

State Courts Building, Room 119 A/B

1501 W. Washington St., Phoenix, AZ 85007